APPENDIX A — ORDER OF THE APPELLATE COURT OF ILLINOIS, FIRST JUDICIAL DISTRICT DATED JUNE 3, 2008

SECOND DIVISION
June 3,2008

No. 1-07-2559

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellee,

v.

ABAYOMI ADEDIJI,

Defendant-Appellant.

Appeal from the Circuit Court of Cook County.

No. 02 CR 4554

Honorable
Joseph G. Kazmierski, Jr.,
Judge Presiding.

ORDER

Defendant Abayomi Adediji was previously tried in the circuit court of Cook County for murder and armed robbery. He was convicted following a jury trial and

subsequently sentenced to consecutive terms of imprisonment: 50 years for murder and 10 years for armed robbery. This court reversed the convictions and sentence on procedural grounds and remanded for a new trial. Prior to the second trial, defendant filed a motion to dismiss the felony-murder charges on the grounds of double jeopardy, which was denied by the circuit court. Defendant then filed a notice of appeal to this court pursuant to Illinois Supreme Court Rule 604(f) (210 Ill. 2d R. 6040) that permits appeals from orders which deny a motion to dismiss based upon the "grounds of former jeopardy."

The evidence presented at trial established that on the evening of January 16, 2002, defendant fatally shot Kamoludeen Okunnu, a/k/a Noah, in an apartment on Touhy Avenue in Chicago. Just prior to trial, the State nol-prossed all of the counts except V, VI and X. Count V alleged first degree murder as an unlawful killing knowing that such acts created a strong probability of death or great bodily harm; count VI alleged felony murder; and count X alleged armed robbery. The jury subsequently found defendant guilty of first degree murder and armed robbery. Defendant's posttrial motion was denied, and the cause proceeded to sentencing. The trial court sentenced defendant to 50 years' imprisonment on count V for first degree murder and 10 years' imprisonment on count X for armed robbery. Defendant appealed after his postsentencing motion was denied.

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Defendant raised three issues on his first appeal: (1) whether the trial court committed reversible error when it refused to instruct the jury on the lesser-included offense of involuntary manslaughter; (2) whether his convictions and sentences for both felony murder predicated on the underlying felony of armed robbery and armed robbery violate double jeopardy; and (3) whether the conviction and sentence for armed robbery should be vacated.

We found that a disputed factual element existed as to whether defendant fired the gun intentionally or recklessly during a struggle and whether the jury could have rationally concluded that he did not intend to shoot the victim. Therefore, the evidence presented at trial could have rationally sustained a conviction for involuntary manslaughter and an acquittal for first degree murder. We concluded that the trial court erred by refusing to instruct the jury on the lesser-included offense of involuntary manslaughter, reversed defendant's convictions, and remanded for a new trial. Prior to the second trial, defendant fled a motion to dismiss the felony-murder charges on the grounds of double jeopardy, which was denied by the circuit court.

This appeal followed.

Defendant now contends that the double jeopardy provisions of the United States and Illinois Constitutions prevent the State from retrying him for felony murder. In support of this argument he contends: (1) he was tried, but not convicted, on felony murder during his

first trial; (2) double jeopardy bars retrial of certain charges following an appellate reversal of a conviction if the first trial ends without a conviction and sentence on all of the charges; and (3) his conviction in his first trial prohibits a retrial because a second prosecution puts him in jeopardy twice for the same crime.

When, as here, the issues raised are purely issues of law, we review the record *de novo*. *People v. Daniels*, 187 Ill. 2d 301, 307 (1999).

The fifth amendment of the United States Constitution states in relevant part: "[N]or shall any person be subject for the same offence to be twice put in jeopardy of life or limb ***." U.S. Const., amend. V. The same principle is contained in the Illinois Constitution. Ill. Const. 1970, art. I, §10. A verdict of not guilty, whether rendered by the jury or directed by the trial judge, shields the defendant from a retrial for the same offense. *People v. Knaff*, 196 Ill. 2d 460,468 (2001).

In a jury trial, jeopardy attaches when the jury is empaneled and sworn. *Daniels*, 187 Ill. 2d at 3 10. Moreover, the prohibition against placing a defendant in double jeopardy will not preclude a second trial if the defendant successfully appeals a conviction, and the reviewing court reverses the conviction on grounds other than the sufficiency of the evidence. *Daniels*, 187 Ill. 2d at 310; citing *Burks v. United States*, 437 U.S. 1, 18, 57 L. Ed. 2d 1, 14, 98 S. Ct. 2141, 2150-51 (1978).

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In the case at bar, defendant was charged with intentional murder, felony murder, and armed robbery. He was tried by a jury and convicted of murder and armed robbery. Defendant appealed his convictions, and this court reversed and remanded for a new trial because of the trial court's failure to instruct the jury on a lesser-included offense. Therefore, we find defendant was not subject to double jeopardy by our remand for a new trial.

Defendant contends, however, that he was tried but not convicted on felony murder during his first trig.

"It is well-settled that, where an indictment contains several counts arising out of a single transaction and the jury returns a general verdict, the defendant is guilty as charged in each count to which the proof is applicable." *People v. Ollie*, 333 Ill. App. 3d 971, 988 (2002), quoting *People v. Kidd*, 178 Ill. 2d 92, 126 (1997). Moreover, where multiple convictions are obtained for offenses arising out of a single act, sentence is imposed on the most serious offense. *Ollie*, 333 Ill. App. 3d at 988. Intentional murder is deemed to be the most serious offense between felony murder and intentional murder. *Ollie*, 333 Ill. App. 3d at 988.

Here, defendant was charged with both intentional murder and felony murder, as well as armed robbery. The jury returned a general verdict for murder and armed robbery, and he was sentenced on both charges. It necessarily follows, therefore, that defendant was convicted of felony murder and properly sentenced solely on the intentional murder count since that was

the most serious offense of the two charges. Therefore, it does not violate double jeopardy for defendant to be retried on all of the counts, which includes felony murder.

For the foregoing reasons, the judgment of the circuit court is affirmed.

Affirmed.

SOUTH, J., with HOFFMAN, P. J., and HALL, J., concurring.

APPENDIX B — ORDER OF THE SUPREME COURT OF ILLINOIS DENYING PETITION FOR LEAVE TO APPEAL DATED SEPTEMBER 24, 2008

SUPREME COURT OF ILLINOIS
CLERK OF THE COURT
SUPREME COURT BUILDING
SPRINGFIELD, ILLINOIS 62701
(217) 782-2035

September 24, 2008

Mr. Robert S. Walton
Baker & McKenzie, LLP
130 E. Randolph Dr., Suite 3500
Chicago, IL 60601

No. 106815 – People State of Illinois, respondent v. Abayomi Adediji, petitioner. Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on October 29, 2008.

APPENDIX C — 720 ILCS 5/3-4

(720 ILCS 5/3-4) (from Ch. 38, par. 3-4)

Sec. 3-4. Effect of former prosecution.

(a) A prosecution is barred if the defendant was formerly prosecuted for the same offense, based upon the same facts, if such former prosecution:

(1) Resulted in either a conviction or an acquittal or in a determination that the evidence was insufficient to warrant a conviction; or

(2) Was terminated by a final order or judgment, even if entered before trial, which required a determination inconsistent with any fact or legal proposition necessary to a conviction in the subsequent prosecution; or

(3) Was terminated improperly after the jury was impaneled and sworn or, in a trial before a court without a jury, after the first witness was sworn but before findings were rendered by the trier of facts, or after a plea of guilty was accepted by the court.

A conviction of an included offense is an acquittal of the offense charged.

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(b) A prosecution is barred if the defendant was formerly prosecuted for a different offense, or for the same offense based upon different facts, if such former prosecution:

(1) Resulted in either a conviction or an acquittal, and the subsequent prosecution is for an offense of which the defendant could have been convicted on the former prosecution; or was for an offense with which the defendant should have been charged on the former prosecution, as provided in Section 3 3 of this Code (unless the court ordered a separate trial of such charge); or was for an offense which involves the same conduct, unless each prosecution requires proof of a fact not required on the other prosecution, or the offense was not consummated when the former trial began; or

(2) Was terminated by a final order or judgment, even if entered before trial, which required a determination inconsistent with any fact necessary to a conviction in the subsequent prosecution; or

(3) Was terminated improperly under the circumstances stated in Subsection (a), and the subsequent prosecution is for an offense of which the defendant could have been convicted if the former prosecution had not been terminated improperly.

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(c) A prosecution is barred if the defendant was formerly prosecuted in a District Court of the United States or in a sister State for an offense which is within the concurrent jurisdiction of this State, if such former prosecution:

(1) Resulted in either a conviction or an acquittal, and the subsequent prosecution is for the same conduct, unless each prosecution requires proof of a fact not required in the other prosecution, or the offense was not consummated when the former trial began; or

(2) Was terminated by a final order or judgment, even if entered before trial, which required a determination inconsistent with any fact necessary to a conviction in the prosecution in this State.

(d) However, a prosecution is not barred within the meaning of this Section 3-4 if the former prosecution:

(1) Was before a court which lacked jurisdiction over the defendant or the offense; or

(2) Was procured by the defendant without the knowledge of the proper prosecuting officer, and with the purpose of avoiding the sentence which otherwise might be imposed; or if subsequent proceedings resulted in the invalidation, setting aside, reversal, or vacating of the conviction, unless the defendant was thereby adjudged not guilty.

APPENDIX D — 720 ILCS 5/9-1

(720 ILCS 5/9-1) (from Ch. 38, par. 9-1)

Sec. 9-1. First degree Murder Death penalties Exceptions Separate Hearings Proof Findings Appellate procedures Reversals.

(a) A person who kills an individual without lawful justification commits first degree murder if, in performing the acts which cause the death:

(1) he either intends to kill or do great bodily harm to that individual or another, or knows that such acts will cause death to that individual or another; or

(2) he knows that such acts create a strong probability of death or great bodily harm to that individual or another; or

(3) he is attempting or committing a forcible felony other than second degree murder.

(b) Aggravating Factors. A defendant who at the time of the commission of the offense has attained the age of 18 or more and who has been found guilty of first degree murder may be sentenced to death if:

(1) the murdered individual was a peace officer or fireman killed in the course of performing his official duties, to prevent the performance of his official duties, or in retaliation for performing his official duties, and the

defendant knew or should have known that the murdered individual was a peace officer or fireman; or

(2) the murdered individual was an employee of an institution or facility of the Department of Corrections, or any similar local correctional agency, killed in the course of performing his official duties, to prevent the performance of his official duties, or in retaliation for performing his official duties, or the murdered individual was an inmate at such institution or facility and was killed on the grounds thereof, or the murdered individual was otherwise present in such institution or facility with the knowledge and approval of the chief administrative officer thereof; or

(3) the defendant has been convicted of murdering two or more individuals under subsection (a) of this Section or under any law of the United States or of any state which is substantially similar to subsection (a) of this Section regardless of whether the deaths occurred as the result of the same act or of several related or unrelated acts so long as the deaths were the result of either an intent to kill more than one person or of separate acts which the defendant knew would cause death or create a strong probability of death or great bodily harm to the murdered individual or another; or

(4) the murdered individual was killed as a result of the hijacking of an airplane, train, ship, bus or other public conveyance; or

(5) the defendant committed the murder pursuant to a contract, agreement or understanding by which he was to receive money or anything of value in return for committing the murder or procured another to commit the murder for money or anything of value; or

(6) the murdered individual was killed in the course of another felony if:

(a) the murdered individual:

(i) was actually killed by the defendant, or

(ii) received physical injuries personally inflicted by the defendant substantially contemporaneously with physical injuries caused by one or more persons for whose conduct the defendant is legally accountable under Section 5 2 of this Code, and the physical injuries inflicted by either the defendant or the other person or persons for whose conduct he is legally accountable caused the death of the murdered individual; and

(b) in performing the acts which caused the death of the murdered individual or which resulted in physical injuries personally inflicted by the defendant on the murdered individual under the circumstances of subdivision (ii) of subparagraph (a) of paragraph (6) of subsection (b) of this Section, the defendant acted with the intent to kill the murdered individual or with the knowledge that his acts created a strong probability of death or great bodily harm to the murdered individual or another; and

(c) the other felony was an inherently violent crime or the attempt to commit an inherently violent crime. In this subparagraph (c), "inherently violent crime" includes, but is not limited to, armed robbery, robbery, predatory criminal sexual assault of a child, aggravated criminal sexual assault, aggravated kidnapping, aggravated vehicular hijacking, aggravated arson, aggravated stalking, residential burglary, and home invasion; or

(7) the murdered individual was under 12 years of age and the death resulted from exceptionally brutal or heinous behavior indicative of wanton cruelty; or

(8) the defendant committed the murder with intent to prevent the murdered individual from testifying or participating in any criminal investigation or prosecution or giving material assistance to the State in any investigation or prosecution, either against the defendant or another; or the defendant committed the murder because the murdered individual was a witness in any prosecution or gave material assistance to the State in any investigation or prosecution, either against the defendant or another; for purposes of this paragraph (8), "participating in any criminal investigation or prosecution" is intended to include those appearing in the proceedings in any capacity such as trial judges, prosecutors, defense attorneys, investigators, witnesses, or jurors; or

(9) the defendant, while committing an offense punishable under Sections 401, 401.1, 401.2, 405, 405.2, 407 or 407.1 or subsection (b) of Section 404 of the Illinois Controlled Substances Act, or while engaged in a conspiracy or solicitation to commit such offense, intentionally killed an individual or counseled, commanded, induced, procured or caused the intentional killing of the murdered individual; or

(10) the defendant was incarcerated in an institution or facility of the Department of Corrections at the time of the murder, and while committing an offense punishable as a felony under Illinois law, or while engaged in a conspiracy or solicitation to commit such offense, intentionally killed an individual or counseled, commanded, induced, procured or caused the intentional killing of the murdered individual; or

(11) the murder was committed in a cold, calculated and premeditated manner pursuant to a preconceived plan, scheme or design to take a human life by unlawful means, and the conduct of the defendant created a reasonable expectation that the death of a human being would result therefrom; or

(12) the murdered individual was an emergency medical technician ambulance, emergency medical technician intermediate, emergency medical technician paramedic, ambulance driver, or other medical assistance or first aid personnel, employed by a municipality or other governmental unit, killed in the course of performing his official duties, to prevent the performance of his official duties, or in retaliation for performing his official duties, and the defendant knew or should have known that the murdered individual was an emergency medical technician ambulance,

emergency medical technician intermediate, emergency medical technician paramedic, ambulance driver, or other medical assistance or first aid personnel; or

(13) the defendant was a principal administrator, organizer, or leader of a calculated criminal drug conspiracy consisting of a hierarchical position of authority superior to that of all other members of the conspiracy, and the defendant counseled, commanded, induced, procured, or caused the intentional killing of the murdered person; or

(14) the murder was intentional and involved the infliction of torture. For the purpose of this Section torture means the infliction of or subjection to extreme physical pain, motivated by an intent to increase or prolong the pain, suffering or agony of the victim; or

(15) the murder was committed as a result of the intentional discharge of a firearm by the defendant from a motor vehicle and the victim was not present within the motor vehicle; or

(16) the murdered individual was 60 years of age or older and the death resulted from exceptionally brutal or heinous behavior indicative of wanton cruelty; or

(17) the murdered individual was a disabled person and the defendant knew or should have known that the murdered individual was disabled. For purposes of this paragraph (17), "disabled person" means a person who suffers from a permanent physical or mental impairment resulting from disease, an injury, a functional disorder, or a congenital condition that renders the person incapable of adequately providing for his or her own health or personal care; or

(18) the murder was committed by reason of any person's activity as a community policing volunteer or to prevent any person from engaging in activity as a community policing volunteer; or

(19) the murdered individual was subject to an order of protection and the murder was committed by a person against whom the same order of protection was issued under the Illinois Domestic Violence Act of 1986; or

(20) the murdered individual was known by the defendant to be a teacher or other person employed in any school and the teacher or other employee is upon the grounds of a school or grounds adjacent to a school, or is in any part of a building used for school purposes; or

(21) the murder was committed by the defendant in connection with or as a result of the offense of terrorism as defined in Section 29D 30 of this Code.

(c) Consideration of factors in Aggravation and Mitigation. The court shall consider, or shall instruct the jury to consider any aggravating and any mitigating factors which are relevant to the imposition of the death penalty. Aggravating factors may include but need not be limited to those factors set forth in subsection (b). Mitigating factors may include but need not be limited to the following:

(1) the defendant has no significant history of prior criminal activity;

(2) the murder was committed while the defendant was under the influence of extreme mental or emotional disturbance, although not such as to constitute a defense to prosecution;

(3) the murdered individual was a participant in the defendant's homicidal conduct or consented to the homicidal act;

(4) the defendant acted under the compulsion of threat or menace of the imminent infliction of death or great bodily harm;

(5) the defendant was not personally present during commission of the act or acts causing death;

(6) the defendant's background includes a history of extreme emotional or physical abuse;

(7) the defendant suffers from a reduced mental capacity.

(d) Separate sentencing hearing. Where requested by the State, the court shall conduct a separate sentencing proceeding to determine the existence of factors set forth in subsection (b) and to consider any aggravating or mitigating factors as indicated in subsection (c). The proceeding shall be conducted:

(1) before the jury that determined the defendant's guilt; or

(2) before a jury impanelled for the purpose of the proceeding if:

A. the defendant was convicted upon a plea of guilty; or

B. the defendant was convicted after a trial before the court sitting without a jury; or

C. the court for good cause shown discharges the jury that determined the defendant's guilt; or

(3) before the court alone if the defendant waives a jury for the separate proceeding.

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(e) Evidence and Argument. During the proceeding any information relevant to any of the factors set forth in subsection (b) may be presented by either the State or the defendant under the rules governing the admission of evidence at criminal trials. Any information relevant to any additional aggravating factors or any mitigating factors indicated in subsection (c) may be presented by the State or defendant regardless of its admissibility under the rules governing the admission of evidence at criminal trials. The State and the defendant shall be given fair opportunity to rebut any information received at the hearing.

(f) Proof. The burden of proof of establishing the existence of any of the factors set forth in subsection (b) is on the State and shall not be satisfied unless established beyond a reasonable doubt.

(g) Procedure Jury. If at the separate sentencing proceeding the jury finds that none of the factors set forth in subsection (b) exists, the court shall sentence the defendant to a term of imprisonment under Chapter V of the Unified Code of Corrections. If there is a unanimous finding by the jury that one or more of the factors set forth in subsection (b) exist, the jury shall consider aggravating and mitigating factors as instructed by the court and shall determine whether the sentence of death shall be imposed. If the jury determines unanimously, after weighing the factors in aggravation and mitigation, that death is the appropriate sentence, the court shall sentence the defendant to death. If the court does not concur with

the jury determination that death is the appropriate sentence, the court shall set forth reasons in writing including what facts or circumstances the court relied upon, along with any relevant documents, that compelled the court to non concur with the sentence. This document and any attachments shall be part of the record for appellate review. The court shall be bound by the jury's sentencing determination. If after weighing the factors in aggravation and mitigation, one or more jurors determines that death is not the appropriate sentence, the court shall sentence the defendant to a term of imprisonment under Chapter V of the Unified Code of Corrections.

(h) Procedure No Jury. In a proceeding before the court alone, if the court finds that none of the factors found in subsection (b) exists, the court shall sentence the defendant to a term of imprisonment under Chapter V of the Unified Code of Corrections. If the Court determines that one or more of the factors set forth in subsection (b) exists, the Court shall consider any aggravating and mitigating factors as indicated in subsection (c). If the Court determines, after weighing the factors in aggravation and mitigation, that death is the appropriate sentence, the Court shall sentence the defendant to death. If the court finds that death is not the appropriate sentence, the court shall sentence the defendant to a term of imprisonment under Chapter V of the Unified Code of Corrections.

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(h 5) Decertification as a capital case. In a case in which the defendant has been found guilty of first degree murder by a judge or jury, or a case on remand for resentencing, and the State seeks the death penalty as an appropriate sentence, on the court's own motion or the written motion of the defendant, the court may decertify the case as a death penalty case if the court finds that the only evidence supporting the defendant's conviction is the uncorroborated testimony of an informant witness, as defined in Section 115 21 of the Code of Criminal Procedure of 1963, concerning the confession or admission of the defendant or that the sole evidence against the defendant is a single eyewitness or single accomplice without any other corroborating evidence. If the court decertifies the case as a capital case under either of the grounds set forth above, the court shall issue a written finding. The State may pursue its right to appeal the decertification pursuant to Supreme Court Rule 604(a)(1). If the court does not decertify the case as a capital case, the matter shall proceed to the eligibility phase of the sentencing hearing.

(i) Appellate Procedure. The conviction and sentence of death shall be subject to automatic review by the Supreme Court. Such review shall be in accordance with rules promulgated by the Supreme Court. The Illinois Supreme Court may overturn the death sentence, and order the imposition of imprisonment under Chapter V of the Unified Code of Corrections if the court finds that the death sentence is fundamentally unjust as applied to the particular case. If the Illinois Supreme Court finds

that the death sentence is fundamentally unjust as applied to the particular case, independent of any procedural grounds for relief, the Illinois Supreme Court shall issue a written opinion explaining this finding.

(j) Disposition of reversed death sentence. In the event that the death penalty in this Act is held to be unconstitutional by the Supreme Court of the United States or of the State of Illinois, any person convicted of first degree murder shall be sentenced by the court to a term of imprisonment under Chapter V of the Unified Code of Corrections. In the event that any death sentence pursuant to the sentencing provisions of this Section is declared unconstitutional by the Supreme Court of the United States or of the State of Illinois, the court having jurisdiction over a person previously sentenced to death shall cause the defendant to be brought before the court, and the court shall sentence the defendant to a term of imprisonment under Chapter V of the Unified Code of Corrections.

(k) Guidelines for seeking the death penalty. The Attorney General and State's Attorneys Association shall consult on voluntary guidelines for procedures governing whether or not to seek the death penalty. The guidelines do not have the force of law and are only advisory in nature.

APPENDIX E — 720 ILCS 5/18-2

(720 ILCS 5/18-2) (from Ch. 38, par. 18-2)

Sec. 18-2. Armed robbery.

(a) A person commits armed robbery when he or she violates Section 18-1; and

(1) he or she carries on or about his or her person or is otherwise armed with a dangerous weapon other than a firearm; or

(2) he or she carries on or about his or her person or is otherwise armed with a firearm; or

(3) he or she, during the commission of the offense, personally discharges a firearm; or

(4) he or she, during the commission of the offense, personally discharges a firearm that proximately causes great bodily harm, permanent disability, permanent disfigurement, or death to another person.

(b) Sentence. Armed robbery in violation of subsection (a)(1) is a Class X felony. A violation of subsection (a)(2) is a Class X felony for which 15 years shall be added to the term of imprisonment imposed by the court. A violation of subsection (a)(3) is a Class X felony for which 20 years shall be added to the term of imprisonment imposed by the court. A violation of subsection (a)(4) is a Class X felony for which 25 years or up to a term of natural life shall be added to the term of imprisonment imposed by the court.